

Message Text

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DEPT PASS IO/SCT

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TAGS: IAEA, PARM, TECH
SUBJECT: IAEA SAFEGUARDS IN RELATION TO TECHNICAL ASSISTANCE;
FEBRUARY 22 BOARD OF GOVERNORS MEETING

REF: A) 76 IAEA VIENNA 10287, (B) 76 IAEA VIENNA 10322,
(C) 76 IAEA VIENNA 9993

1. MISSION HAS RECEIVED FROM SECRETARIAT DRAFT AGENCY
DOCUMENT, IN FORM OF GOV/INF, ENTITLED QUOTE
THE APPLICATION OF SAFEGUARDS IN RELATION TO THE
GRANTING OF TECHNICAL ASSISTANCE UNQUOTE. THIS DOCUMENT
IS SUCCESSOR TO "RATIONALE PAPER" REFERRED TO IN PARA
1 REFTEL A, AND IS GENERALLY CONSISTENT WITH SECRETARIAT
VIEWS REPORTED IN REFTEL B. DRAFT DOCUMENT REFLECTS
MISSION'S INFORMAL COMMENTS REQUESTED BY SECRETARIAT IN
ANTICIPATION OF DISTRIBUTION OF FINAL VERSION SHORTLY.

2. DRAFT GOV/INF TEXT FOLLOWS:
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QUOTE A. IN VIEW OF THE INTEREST EXPRESSED IN THIS
MATTER AT THE RECENT MEETING OF THE TECHNICAL ASSISTANCE

COMMITTEE, THE DIRECTOR GENERAL BELIEVE IT WOULD BE
TIMELY TO OUTLINE THE DEVELOPMENTS THAT HAVE OCCURRED
SINCE THE 1975 TECHNICAL ASSISTANCE COMMITTEE MEETING.

QUOTE B. THE ESSENCE OF TECHNICAL ASSISTANCE IS THE TRANSFER OF "KNOW HOW" I.E. THE TRANSFER OF SCIENTIFIC AND TECHNOLOGICAL INFORMATION BY MEANS OF TRAINING (FELLOWSHIPS, TRAINING COURSES, ETC.), PROVISION OF EXPERTS' SERVICES AND ASSOCIATED EQUIPMENT.

QUOTE C. UNTIL RECENTLY, THE QUESTION OF APPLYING SAFEGUARDS IN RELATION TO TECHNOLOGY TRANSFER THROUGH THE MEDIUM OF TECHNICAL ASSISTANCE DID NOT ARISE FOR THE AGENCY SINCE THE BULK OF THE AGENCY'S TECHNICAL ASSISTANCE PROGRAMMES WERE IN FIELDS REMOTE FROM ANY POTENTIAL MILITARY USE OF ATOMIC ENERGY. IN FEBRUARY 1976, THE DIRECTOR GENERAL POINTED OUT THAT AS THE AGENCY'S MEMBER STATES ENGAGE INCREASINGLY IN THE MAJOR TECHNOLOGICAL APPLICATIONS OF NUCLEAR ENERGY, THIS SITUATION WAS BEGINNING TO CHANGE. HE WENT ON TO INFORM THE BOARD THAT THE QUESTION OF THE TRANSFER OF TECHNOLOGICAL INFORMATION THROUGH THE MEDIUM OF TECHNICAL ASSISTANCE, HAD BEEN TOUCHED UPON BY THE TECHNICAL ASSISTANCE COMMITTEE AT ITS MEETING ON 27 NOVEMBER 1975 IN RELATION TO THE PROVISION OF ASSISTANCE IN THE FIELD OF REPROCESSING.

QUOTE D. THE DIRECTOR GENERAL WENT ON TO INDICATE THAT THE GUIDELINES FOR THE AGENCY WERE CLEARLY SET FORTH IN ARTICLE II AND ARTICLE III.A.5 OF THE STATUTE IN DOCUMENTS INFCIRC/66 AND INFCIRC/153 AND IN RECENT DECISIONS OF THE BOARD RELATING TO SAFEGUARDS AGREE-LIMITED OFFICIAL USE

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MENTS, WHICH INDICATED HOW THE TRANSFER OF TECHNOLOGY SHOULD BE DEALT WITH. THE QUESTION THEREFORE BECAME ONE OF APPLYING THESE GUIDELINES IN INDIVIDUAL CASES AND THE DIRECTOR GENERAL INDICATED THAT THIS HAD BEEN DONE IN RELATION TO THE 1976 PROGRAMME.

QUOTE E. IN A NUMBER OF SAFEGUARDS AGREEMENTS DURING THE LAST TWO YEARS THE BOARD HAD ENDORSED THE PRINCIPLE THAT ANY 'HARDWARE' (PLANT, EQUIPMENT, NUCLEAR MATERIALS, HEAVY WATER) THAT RESULTS FROM THE TRANSFER OF SPECIFIED CATEGORIES OF TECHNOLOGY MUST BE PLACED UNDER IAEA SAFEGUARDS (E.G. THE SAFEGUARDS AGREEMENTS BETWEEN FRANCE/REPUBLIC OF KOREA/IAEA: FRANCE/PAKISTAN/IAEA: BRAZIL/FEDERAL REPUBLIC OF GERMANY/IAEA: FRANCE/SOUTH AFRICA/IAEA: CANADA/SPAIN/IAEA). THIS PRINCIPLE IS CONSISTENT WITH THE PROVISIONS OF ARTICLE II OF THE STATUTE THAT THE AGENCY 'SHALL ENSURE, SO FAR AS IT IS ABLE, THAT ASSISTANCE PROVIDED BY IT OR AT ITS REQUEST OR UNDER ITS SUPERVISION OR CONTROL

IT NOT USED IN SUCH A WAY TO FURTHER ANY MILITARY PURPOSE' AND ARTICLE III.A.5 UNDER WHICH THE AGENCY APPLIES SAFEGUARDS TO ENSURE THAT THE ENUMERATED ITEMS INCLUDING 'INFORMATION MADE AVAILABLE BY THE AGENCY OR AT ITS REQUEST OR UNDER ITS SUPERVISION OR CONTROL ARE NOT USED IN SUCH A WAY AS TO FURTHER ANY MILITARY PURPOSE'.

QUOTE F. THE PRINCIPLE REFERRED TO IN THE PRECEDING PARAGRAPH IS AUTOMATICALLY ACHIEVED IN ALL COUNTRIES THAT HAVE ACCEPTED NPT SAFEGUARDS OR OTHER SAFEGUARDS COVERING ALL THEIR NUCLEAR ACTIVITIES. (FOOTNOTE: FOR INSTANCE, SAFEGUARDS AGREEMENTS CONCLUDED IN CONNECTION WITH THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA.) HENCE, NO ADDITIONAL AGREEMENTS RELATING TO THE "FRUITS" OF TECHNICAL ASSISTANCE ARE REQUIRED IN SUCH CASES. LIMITED OFFICIAL USE

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QUOTE G. IN THE AGREEMENT BETWEEN BRAZIL, THE FEDERAL REPUBLIC OF GERMANY AND THE AGENCY, A NUMBER OF

CATEGORIES OF TECHNOLOGY TO BE TRANSFERRED ARE IDENTIFIED AS REQUIRING THE APPLICATION OF SAFEGUARDS TO RESULTING 'HARDWARE'. THE TRANSFER OF RELEVANT TECHNOLOGICAL INFORMATION IN THESE FIELDS MUST BE IDENTIFIED TO THE AGENCY AND THE AGENCY UNDERTAKES TO

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APPLY SAFEGUARDS ON ANY NUCLEAR FACILITY OR EQUIPMENT
DESIGNED, CONSTRUCTED OR OPERATED IN THESE TECHNOLOGICAL
AREAS. THESE AREAS INCLUDE: (FOOTNOTE: INFCIRC/237,
ARTICLE III.1.)

I. PRODUCTION OF NUCLEAR MATERIAL COMPOUND OF A
PURITY SUITABLE FOR USE IN THE FUEL CYCLE;

II. MANUFACTURE OF NUCLEAR REACTORS, OTHER
FACILITIES OR THEIR COMPONENTS;

III. URANIUM ENRICHMENT;

IV. FABRICATION OF FUEL ELEMENTS;

V. REPROCESSING OF IRRADIATED FUEL.

IN THE CANADA/SPAIN/IAEA AGREEMENT, THE PRODUCTION OF
HEAVY WATER WAS ALSO IDENTIFIED AS AN AREA OF TECHNOLOGY
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TRANSFER REQUIRING THE APPLICATION OF SAFEGUARDS TO
RESULTING 'HARDWARE'.

QUOTE G. WHEN A STATE REQUESTS TECHNICAL ASSISTANCE,
IT MUST BE ASSUMED THAT IT IS ITS INTENTION TO GIVE
PRACTICAL EFFECT TO THE ASSISTANCE REQUESTED. IF THE
ASSISTANCE IS REQUESTED IN A PARTICULAR TECHNOLOGY,
IT MUST BE ASSUMED (AND THIS IS, IN FACT, THE UNDER-
STANDING OF THE AGENCY WHEN GRANTING THE ASSISTANCE)
THAT THE REQUESTED EXPERT OR THE RETURNING FELLOW WILL
APPLY THE TECHNOLOGY EITHER IN AN EXISTING FACILITY
OR IN THE DEVELOPMENT OF A NEW FACILITY AND THAT
EQUIPMENT REQUESTED WILL BE SO USED. THE APPLICATION
OF SAFEGUARDS TO ANY SUCH RESULTING FACILITY OR
EQUIPMENT AND THE NUCLEAR MATERIAL PRODUCED, PROCESSED
OR USED IN ITS OR BY IT MUST BE ASSURED IN APPROPRIATE
CASES. THERE IS, OF COURSE, NO QUESTION OF 'APPLYING
SAFEGUARDS TO THE EXPERT' OR 'TO THE FELLOWSHIP HOLDER.'

QUOTE H. THE SITUATION WHICH EMERGES IS THEREFORE
ANALOGOUS FROM A SAFEGUARDS POINT OF VIEW TO THAT

WHICH RESULTS FROM THE APPLICATION OF THE TRILATERAL SAFEGUARDS AGREEMENTS REFERRED TO IN PARAGRAPH E. IF A TRANSFER OF SPECIFIED TECHNOLOGY TAKES PLACE UNDER ONE OF THOSE TRILATERAL AGREEMENTS, AND IF THIS TRANSFER BEARS FRUIT IN THE FORM OF IMPROVED OR NEW PLANT OR EQUIPMENT, SAFEGUARDS ARE APPLIED TO THAT PLANT AND EQUIPMENT, TO ANY REPLICATION THEREOF AND TO THE NUCLEAR MATERIAL PRODUCED, PROCESSED OR USED BY SUCH PLANT OR EQUIPMENT. IF THE TRANSFER OF TECHNOLOGY WERE NOT TO TAKE PLACE OR WERE NOT TO BEAR FRUIT, NO NEW OR IMPROVED PLANT OR EQUIPMENT WOULD RESULT AND, ACCORDINGLY, NO SAFEGUARDS WOULD BE APPLIED UNDER THOSE TRILATERAL AGREEMENTS. SIMILARLY IF A FELLOW, DESPITE THE UNDERTAKINGS MADE AT THE TIME HE APPLIED FOR HIS FELLOWSHIP, SHOULD NOT RETURN TO LIMITED OFFICIAL USE

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THE NOMINATING COUNTRY, THE TECHNICAL ASSISTANCE WOULD NOT BEAR FRUIT IN THAT COUNTRY AND THERE WOULD BE NO NEW OR IMPROVED PLANT OR EQUIPMENT OF THE TYPE IN QUESTION TO WHICH TO APPLY SAFEGUARDS.

QUOTE I. IT SHOULD ALSO BE CLEAR THAT THE NOMINATING OR REQUESTING GOVERNMENT CAN ONLY BE HELD RESPONSIBLE FOR PLANT, EQUIPMENT, NUCLEAR MATERIAL, ETC., THAT BENEFIT OR DERIVE FROM THE TRANSFER OF TECHNOLOGY TO THAT COUNTRY. IF A FELLOWSHIP HOLDER, FOR EXAMPLE, GOES ELSEWHERE AFTER HIS TRAINING IS COMPLETED OR AFTER HIS RETURN HOME, THE NOMINATING COUNTRY CANNOT BE HELD ACCOUNTABLE FOR ANY TECHNOLOGY THEREBY TRANSFERRED TO THE THIRD COUNTRY.

QUOTE J. CERTAIN PRACTICAL PROBLEMS ARISE IN DRAFTING AN AGREEMENT THAT DEALS WITH THE TRANSFER OF TECHNOLOGY THROUGH THE MEDIUM OF TECHNICAL ASSISTANCE RATHER THAN IN THE FORM OF BLUEPRINTS, SPECIFICATIONS OR OTHER 'SOFTWARE.' IT IS MORE DIFFICULT TO BE PRECISE IN THE FIRST CASE ABOUT THE DATE OF THE TRANSFER OF THE TECHNOLOGY AND TO DESCRIBE IT IN ANY PRECISE DETAIL. MOREOVER, THE TRANSFERRING STATE (I.E. THE STATE FROM WHICH THE EQUIPMENT IS OBTAINED OR THE EXPERT IS RECRUITED OR IN WHICH THE FELLOW RECEIVES TRAINING) WILL NOT BE A PARTY TO THE TECHNICAL ASSISTANCE AGREEMENT.

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QUOTE K. FOR THESE REASONS A SAFEGUARDS AGREEMENT
RELATING TO TECHNICAL ASSISTANCE CANNOT CONTAIN A
PROVISION UNDER WHICH THE TRANSFERRING STATE DESCRIBES
THE TRANSFERRED TECHNOLOGY AND THE DATE OF TRANSFER AS
IS DONE IN SOME OF THE TRILATERAL AGREEMENTS
REFERRED TO IN PARA E. IN PLACE OF THIS, AN AGREEMENT
RELATING TO TECHNICAL ASSISTANCE MAY HAVE TO PROVIDE
FOR THE APPLICATION OF SAFEGUARDS TO ANY PLANT AND
EQUIPMENT--AND TO ANY NUCLEAR MATERIALS PRODUCED,
PROCESSED OR USED BY OR IN THEM--IN THE SAME
TECHNOLOGICAL AREA AS THAT WHICH WAS THE SUBJECT OF
THE TECHNICAL ASSISTANCE. UNQUOTE.

3. MISSION INFORMED THAT THERE ARE NOW SIX PENDING TECHNICAL
ASSISTANCE REQUESTS WHICH WARRANT APPLICATION OF
SAFEGUARDS:

A. INDIA: TWO SCIENTIFIC VISITS,
ONE IN HEAVY WATER PRODUCTION AND ONE IN SAFETY
ASPECTS OF MIXED OXIDE FUEL FABRICATION.

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B. ARGENTINA: ONE FELLOWSHIP IN FUEL ELEMENT
REPROCESSING AND ONE SCIENTIFIC VISIT IN PLUTONIUM
FUEL FABRICATION.

C. PAKISTAN: ONE FELLOWSHIP IN FUEL FABRICATION

(ENTITLED "POST-IRRADIATION EXAMINATION OF URANIUM OXIDE AND PLUTONIUM OXIDE FUELS"; PURPOSE UNDERSTOOD TO BE APPLICATION METALLOGRAPHY TECHNIQUES TO VERIFY FUEL FABRICATION PROCESS).

D. EGYPT: ONE PROJECT, INVOLVING SUPPLY OF EQUIPMENT AND EXPERTS IN REPROCESSING AND WASTES MANAGEMENT.

4. MISSION INFORMED THAT AGENCY HAD PROVIDED DRAFT SAFEGUARDS AGREEMENTS TWO-THREE WEEKS AGO TO APPLICANTS FOR FOUR OF ABOVE SIX PROGRAMS: INDIAN HEAVY WATER PRODUCTION, ARGENTINE PLUTONIUM FUEL FABRICATION, PAKISTAN FUEL FABRICATION, AND EGYPTIAN REPROCESSING AND WASTES MANAGEMENT. DRAFT SAFEGUARDS AGREEMENTS FOR REMAINING TWO TECHNICAL ASSISTANCE PROGRAMS STILL IN PREPARATION, BUT EXPECTED TO BE PROVIDED TO APPROPRIATE TA APPLICANTS SOON.

5. MISSION HAS RECEIVED, ON PRIVATE BASIS, COPIES OF FOUR DRAFT AGREEMENTS, AND HAS LOANED COPIES TO DEPT A (ADLER, OES/NET), ACDA (VAN DOREN) AND ERDA (AMMONS). EACH IS ESSENTIALLY SAME AS QUOTE MODEL AGREEMENT ON TA SAFEGUARDS UNQUOTE DESCRIBED REF A, DIFFERING ONLY IN THEIR SPECIFICITY AND IN THEIR INCLUSION OF MISSION SUGGESTIONS REPORTED REF A. SECRETARIAT DOES NOT BELIEVE THAT ANY OF THESE FOUR TA AGREEMENTS WILL BE READY FOR FEBRUARY BG CONSIDERA-

TION. INDEED, SECRETARIAT REPORTS THAT INDIA, EGYPT LIMITED OFFICIAL USE

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AND PAKISTAN PLAN AWAIT OUTCOME OF DISCUSSION IN FEBRUARY BG MEETING OF TA SAFEGUARDS POLICY BEFORE THEY WILL CONSIDER DRAFT AGREEMENTS; ARGENTINE REPRESENTATIVE HAS NOT INDICATED POSITION ON THIS

MATTER.

5. MISSION REPORTED IN PARA 3 REF A THAT PAKISTAN HAD APPLIED FOR TA FELLOWSHIP IN REPROCESSING TECHNOLOGY. IN RESPONSE TO INQUIRY BY BENGELSDORF, OES/NET, MISSION HAS CHECKED WITH SECRETARIAT, WHO REPORT THAT REQUEST

NEVER REACHED FORMAL STAGE, AND NO FURTHER ACTION EXPECTED AT LEAST FOR TIME BEING. ONLY PENDING REQUEST TA FROM PAKISTAN WHICH SECRETARIAT BELIEVES WARRANTS SAFEGUARDS IS IN FIELD OF FUEL FABRICATION (PARA 3C ABOVE).

6. MISSION WILL REPORT ANY CHANGES IN TEXT GOV/INF
DOCUMENT AS ISSUED FROM THAT QUOTED PARA 2 ABOVE. STONE

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